

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY D. JOHNSON,

Plaintiff,

No. CIV S-04-0427 GEB DAD P

vs.

FOLSOM STATE PRISON, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On December 17, 2004, defendants filed a motion to dismiss for failure to exhaust administrative remedies. On January 14, 2005, February 10, 2005, and March 22, 2005, the court granted plaintiff extensions of time to file his opposition to the motion to dismiss. On April 14, 2005, plaintiff filed a request to hold this action in abeyance for ninety days so that he could exhaust two administrative appeals. The court will deny the request. The court may not stay this civil rights action to permit exhaustion of administrative remedies. See McKinney v. Carey, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (holding that a prisoner must exhaust administrative remedies before, not after, filing suit in federal court).

Accordingly, IT IS ORDERED that:

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1 1. Plaintiff's April 14, 2005 motion requesting a stay and abeyance of this action
2 is denied; and

3 2. Plaintiff shall file his opposition to defendants' motion to dismiss no later than
4 April 25, 2005. Plaintiff's failure to comply with this order will result in a recommendation that
5 this action be dismissed without prejudice.

6 DATED: April 18, 2005.

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9 DALE A. DROZD
10 UNITED STATES MAGISTRATE JUDGE

9 DAD:4
10 jjohn427.abv